

REMARKS

The Examiner is thanked for withdrawing the final rejection and entering the submission filed December 8, 2009.

Claims 25-36, 38-47, 49 and 50 were rejected under 35 U.S.C. § 112, first paragraph

In the Office Action, Claims 25-27, 30-36, 38, 45-47, 49 and 50 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the description requirement. The Examiner objected to the reference to "a gripper" in claims 25, 47 and 50 and indicated that deleting the expression "or gripper" would remove the basis of this rejection. In response, claims 25, 47 and 50 have been amended to delete the expression "or gripper" and for this reason, it is requested that this ground of rejection be withdrawn.

In paragraph 6 of the Office Action, Claims 26, 47, 49 and 50 were rejected over the admitted prior art (specification pages 4-6) in view of Malholtra or Ito.

Reconsideration is requested.

Claims 25 and 47 have been amended to delete the reference to a gripper. Claims 25, 47 and 50, as amended, now recite a step where the microvoided patch label is placed in a magazine and fed from said magazine at a point where a water based adhesive is applied to form the fastenable label. Claims 25, 47 and 50 have been amended to insert a specific reference to "gluing a back side of said label by contacting said label with a pallet which is pressed against the first label in a stack of labels" in accordance with page 5, line 33 to page 6, line 5.

Claim 50 positively recites that a water based adhesive is applied to a microvoided polymeric film to form a fastenable microvoided polymeric film which is cut into patch labels.

Amended claims 25, 47 and 50, and the claims that depend on these claims, define unobvious subject matter and are patentable over the combination of the admitted prior art Malholtra or Ito.

The Examiner's citation of pages 4-6 of the present specification as a basis for concluding that: "The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container" is traversed as the statements made in the present specification do not support the Examiner's conclusion as to an admission that was made by the applicant.

The applicant traverses the Examiner's interpretation of the present specification at pages 4-6 and denies the alleged admissions that the Examiner has based on pages 4-6 of the specification. The text of the specification at pages 4, line 10 to page 5, line 5 does not support the Examiner's position as to what has been admitted.

At page 4 of the specification, beginning at line 10, there is a discussion of the use of hot melt adhesives in the application of labels that extends to page 5, line 5. The discussion of the use of hot melt adhesives does not constitute the admission that: "The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container"

Beginning at page 5, lines 6-26, the specification discusses the application of "paper based cut patch labels" using a water based adhesive and notes that "the cut label techniques work well with "paper based substrates" because the wet adhesive wicks or absorbs into the paper and allows the "moisture to be absorbed by and dry through the paper base". At line 27, the applicant stated that "This technique (referring to the use of a water based adhesive on a paper base) "will not work with non-porous polymeric label substrates as the adhesives cannot dry thru (wick into) the polymeric substrate". These statements cannot be interpreted as an admission that: "The admitted prior art discloses a conventional method of labeling a glass or plastic container by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container".

Beginning at page 5, line 30 of the present specification, the applicant described the operation of a cut and stack labeling machine without reference to what stock material was used to make the label. These statements were made after stating explicitly that polymeric film would not work with this technique. At page 6, line 11, the applicant described unsuccessful attempts to apply polymeric labels with a water based adhesive using microperforated stock because those attempts resulted in applied labels that would swim or move from their intended location. This discussion of an unsuccessful attempt in the prior art to use a water based adhesive on a perforated polymeric label stock does not place in the prior art a method of applying a polymeric label using a water based adhesive. The quoted text does not support a conclusion that: "The admitted prior art discloses a conventional method of labeling a glass or plastic container

by means of a water based adhesive through a method comprising selecting a paper or polymeric label that will readily feed from a label magazine, placing the label in the label magazine, feeding the label from the label magazine to a label holder which applies the water based adhesive to the label to form a fastenable label, fastening the label to a container and allowing the label to dry/cure on the container". For these reasons, it is requested that the Examiner withdraw the stated conclusion as to what the applicant admitted as regards the content of the prior art and cite a reference to show what it alleged to be admitted prior art.

The Examiner in the present application has applied Malholtra as disclosing a microvoided polymeric label stock. However Malholtra does not disclose the use of water or a water based adhesive, as required by the claims before the Examiner which also require the use of a microvoided polymeric patch label that will readily feed from a label magazine and will allow a water based adhesive to migrate into said microvoided polymeric label.

The Malholtra patent mentions a filled polypropylene with microvoids that is used to make printable pressure laminated labels that are applied with a pressure sensitive adhesive. At col. 5, lines 44-60, it is clear that pressure sensitive adhesives are required by the Malholtra patent. The pressure sensitive polypropylene label of Malholtra does not suggest any modification of the hydrophilic coated PVC label of Goebel. Malholtra only uses a pressure sensitive adhesive on a polymeric label and not a water based adhesive as required by all of the claims of the present application.

The Ito patent only discloses a voided material. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels.

None of the cited references address the problem solved by the present invention which is the labeling of plastic, glass or metal containers with a microvoided polymer using a water based adhesive. There was no suggestion in Ito that the

voided property could be utilized to manage the water in a water based adhesive when the microvoided film was used a labeling material. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 7 of the Office Action, claims 25, 47, 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ito in view of the admitted prior art.

Reconsideration is requested.

The Ito patent only discloses a voided material. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels. Thus Ito is not a teaching reference with regard to the application of a polymeric label to a glass, plastic or metal container using a water based adhesive.

The characterization of what is admitted prior art has been discussed above and the applicant has not admitted that it is old to apply a polymeric label to a glass, plastic or metal container using a water based adhesive. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 8 of the Office Action, claims 25-27, 30-36, 38, 45-47, 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel in view of Malholtra or Ito, the admitted prior art an optionally Spannknebel et al. (Spannknebel)

Reconsideration is requested.

Goebel has been applied as disclosing labels for gluing on articles which may be made of paper or plastic films. The labels are provided with a hydrophilic carboxy group containing polymer. Example 3 of Goebel describes a plastic foil (film) of PVC as a label substrate and mentions at col.1, line 62 that an aqueous adhesive may be used. There are eight examples in Goebel and all examples except Example 3 are only concerned with paper labels. No test data was provided by Goebel to demonstrate if or how his PVC foil could be used to label a container. In addition Goebel did not

mention the use of a stack and feed label application device or any high speed automatic labeling machine.

The Examiner has acknowledged that the plastic foil (film) of Example 3 of Goebel is not microvoided as required by the claims that are before the Examiner.

Example 3 of Goebel was repeated and the results were presented in a Declaration of Leslie Fernandez that is of record in U.S. 6,663,746 and a copy has been filed in the present application. That Declaration provides data that shows that the label of Example 3 will not dry and the treated surface remains sticky like cellophane tape so that those individual labels will stick to one another and cannot be used in a labeling machine where they are stacked one upon another. Claims 25, 47 and 50 point out that the claimed process uses a patch label that will readily feed from a label magazine. In addition claims 25, 47 and 50 recite the direct application of an adhesive to the polymer label as a means for the patch to adhere to the label so that the label may be removed from the magazine. The adhesive can then pass into the into the porous structure of the microvoided film with or without a hydrophilic layer by a wicking action.

Goebel suggests a water based adhesive that cannot be used for labeling using a stack and feed labeling machine.

The Examiner has argued that the claims merely require that the microvoided polymer label be capable of allowing a water based adhesive to migrate into the microvoided polymer. This argument does not apply to claims 25, 47 or 50 and the claims that are dependent on these claims, because these claims are method claims where water or a water based adhesive is applied to the polymeric label to form a fastenable patch label. The step of applying water or a water based adhesive to a microvoided polymeric patch label results in the migration of water into the microvoided material because of the physical structure of the microvoided polymeric patch label which is porous and thus water will flow into this material. This concept is not disclosed by Goebel who only

mentions a plastic foil (film) which is not porous. The density of the PVC film is not set forth in Goebel and nothing in Goebel suggests the use of a microvoided patch label that will allow a water based adhesive to migrate into the microvoided polymeric label.

Goebel would not use the microvoided label of Malholtra for a non-pressure sensitive label application and thus there is no suggestion in Goebel to modify his process to include a microvoided polymer. It is also noteworthy that in combining Goebel with Malholtra, the recitation in claims 25, 47 and 50 of the present application as well as the claims dependent on these claims, that the patch label will readily feed from a label machine, must be ignored, because sticky labels or labels with a pressure sensitive adhesive cannot be applied from a stack of labels in a magazine as they would stick to one another. It is not proper to ignore the plain teachings of the prior art when making a determination of obviousness and to ignore the fact of inoperability when the prior art references are combined.

As noted above, the alleged admitted prior art at page 4, lines 21-25 of the specification was concerned with hot melt technology as noted at page 4, line 12. The fact that hot melt adhesives have been used as label adhesives for polymeric labels does not mean that the applicant admitted that water based adhesives were used to apply polymeric labels to fasten a polymeric label to a glass, plastic or metal container. The present specification at page 5, lines 6-35 explains why a water based adhesive does not work with a polymer label where the water based adhesive is applied to a ordinary polymer film: there is no place for the water to go and the label "swims" off the container.

The Spannknebel patent is only concerned with a labeling machine that applies a pressure sensitive adhesive backed label. (col. 1, lines 2-5) that is carried on a carrier tape. No water based adhesive, as specified in the claims before the Examiner, is used by the Spannknebel machine

and it is not seen how this patent would be relevant to the application of a water based adhesive. The reference to a label stack at col. 1, line 22) is limited to a hot melt type labeling system which also does not use a water based adhesive. At col. 4, line 17, Spannknebel refers to a "magazine roll" which is a rolled up structure of a label with a pressure sensitive adhesive and a carrier tape. This "magazine roll" of pressure sensitive adhesive backed labels is not the same as a label magazine that holds stacks of cut labels and does not make obvious the use of a label magazine as set forth in the claims of the present application. In claim 25, the microvoided patch label is fed from the label magazine to a point where a water based adhesive is applied. This is not even remotely suggested by the cited references. Goebel has been applied as teaching the use of a label magazine in the application of labels but nowhere in the Goebel text is it disclosed that a label magazine is used. Since Goebel makes sticky labels, it is not seen how these sticky labels could be applied from a magazine. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 9 of the Office Action, claims 28, 29, 43 and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel in view of Malholtra or Ito, the admitted prior art and optionally Spannknebel as applied to claims 25-27, 30-36, 38, 45-47 and 50 further in view of Jannusch et al. (Jannusch).

Reconsideration is requested.

Goebel, Maholtra and Ito as well as the admitted state of the art have been distinguished from the claimed invention above. Claims 28, 29, 43 and 44, which depend directly or indirectly from claim 25, point out that a cross-linking catalyst is used which is not used by the primary references. The Jannusch patent, at col. 8, line 38, mentioned polystyrene as the only example of a plastic.

Jannusch does not mention the use of any foamed

plastic substrate as a label and makes no reference to the use of a heat shrinking technique in connection with the use of the Jannusch water based adhesive. Jannusch does not mention any type of a microvoided or foam label. Moreover, Jannusch is silent as to the use of any label substrate which allows water to migrate into the label.

The Jannusch patent is limited to a labeling system which must use a caustic sensitive labeling adhesive that contains an active metal such as aluminum. The metal component is added to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Example XIII, are paper and the only containers that are actually labeled are glass containers.

Jannusch is defective as a reference because it lacks a teaching of anything that would suggest or make obvious the combination of the teachings of that reference with Goebel. The deficiency in the Jannusch patent is that patent is only concerned with the use of an adhesive which contains an active metal that functions to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Jannusch, in Example XIII, are paper and the plastic labels that are mentioned are not disclosed as having being microvoided.

Goebel, Ito, the alleged admitted state of the art and Spannknebel have all been distinguished from the claimed invention above and in combination with Jannusch, they do not make the subject matter of claims 28, 29, 43 and 44 obvious and it is requested that this ground of rejection be withdrawn.

In paragraph 10 of the Office Action, claims 39-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Goebel in view of Malholtra or Ito, the admitted prior art and optionally Spannknebel et al. (Spannknebel) as applied to claims 25-27, 30-36, 38, 45-47 and 50 further in view of Kelly.

Reconsideration is requested.

The Goebel, Malholtra or Ito the alleged admitted state of the art; and Spannkebel have been distinguished from the claimed invention above. Claims 39-42 are concerned with the application of a protective coating to printed indicia and are dependent on claim 26 which is dependent on claim 25.

The Kelly patent only discloses of the use of slip aids in combination with labels that are not made of low density polymers. Nothing in Kelly teaches how to apply a microvoided polymer label to a container. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 11 of the Office Action, claims 26, 27, 30-36, 38, 45 and 46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ito, the admitted prior art and Goebel.

Reconsideration is requested.

All of the rejected claims depend directly or indirectly on claim 25 which has been distinguished from the prior art above.

The Ito patent only discloses a voided material. There is no mention in Ito of what type of adhesive could or should be used if the product is used to make labels. Thus Ito is not a teaching reference with regard to the application of a polymeric label to a glass, plastic or metal container using water based adhesive.

The Goebel labels are provided with a hydrophilic carboxy group containing polymer. Example 3 of Goebel describes a plastic foil (film) of PVC as a label substrate and mentions at col.1, line 62 that an aqueous adhesive may be used. There are eight examples in Goebel and all examples except Example 3 are only concerned with paper labels. No test data was provided by Goebel to demonstrate if or how his PVC foil could be used to label a container. In addition Goebel did not mention of the use of a stack and feed or gripper type of label application device.

The Examiner has criticized the prior filed Declaration of Leslie Fernandez regarding the Goebel patent in

that it tested dried PVC films and that a label magazine did not require that labels be stacked. As noted above, claims 27, 47 and 50 have been revised so they point out that the microvoided labels are fed from a magazine and that the adhesive is applied to a stack of labels by a pallet as described in the specification at page 5, line 33 et seq. The recitation of a stack in the amended claims avoids the Examiner's contention that the term label magazine does not specify a stack of labels to the exclusion of a roll magazine. In any event the use of a water based adhesive is not taught by the prior art which uses roll magazines of pressure sensitive adhesive backed labels.

The prior filed Declaration did show that when the teachings of Goebel were followed, with the exception that a 40 micron sheet was used instead of a "50 micron sheet" and that a coating weight of 8 g./sq. meter was used instead of "6.7-9.7 g/sq. meter", and a heat gun was used for curing vs. "a drying chamber", as noted by the Examiner. It should be noted that Example 3 of Goebel states that it was dried in a "drying channel" while Example 1 recites drying in a "hanging room" and Example 2 recites drying in a "drying chamber" without any mention of the temperature. However, the noted differences have nothing to do with the fact that the Goebel product when stacked, each sheet will adhere to the other because the applied adhesive remained tacky.

It is not seen that it is necessary to demonstrate that a label with a pressure sensitive adhesive or a sticky label will not feed from a magazine of a labeling machine because it is within the skill of the art to make this conclusion based on the established physical properties of the materials without jamming the label magazine of a labeling machine in an actual test. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 12 of the Office Action, claims 28, 29, and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over the admitted prior art, Goebel and

optionally Spannkebel in view of Jannusch.

Reconsideration is requested.

Each of the bases for this ground of rejection has been discussed above. Since the rejected claims are all dependent on claim 25, either directly or indirectly, the arguments set forth above in support of the patentability of claim 25 over the prior art also apply to claims 28, 29 and 44. For these reasons, it is requested that this ground of rejection be withdrawn.


In paragraph 13 of the Office Action, claims 39-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ito, the alleged admitted prior art, Goebel and optionally Spannkebel in view of Kelly.

Reconsideration is requested.

The present ground of rejection relies upon references which have been distinguished from the claimed invention. None of the cited references and no admitted prior art shows a process of applying microvoided polymeric patch labels from a stack of labels using a water based adhesive. All of the rejected claims are dependent on claim 25, either directly or indirectly and the arguments set forth above in support of the patentability of claim 25 over the prior art also apply to claims 39-42. For these reasons, it is requested that this ground of rejection be withdrawn.

An early and favorable action is earnestly solicited.

Respectfully submitted,


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